

CLAIM SUMMARY / DETERMINATION

Claim Number:	E15519-0001
Claimant:	Waterford Regional Fire Department
Type of Claimant:	Local Government
Type of Claim:	Public Services
Claim Manager:	[REDACTED]
Amount Requested:	\$2,387.96

FACTS:

Oil Spill Incident

On June 01, 2015, local authorities discovered a sheen of oil,¹ that was approximately 8-10 feet wide, in the Clinton River, Oakland County, Michigan, a navigable waterway of the United States. Waterford Regional Fire Department, HAZMAT Response Officers (Claimant) responded to the spill with various local cooperating agencies² and began investigating the area to find the source of the spill.

The local agencies requested assistance from the U.S. Environmental Protection Agency (USEPA), Region 5, to assist with the source investigation. Federal On-Scene Coordinator (FOSC), Mr. [REDACTED] arrived on scene. FOSC [REDACTED] mobilized both START and ERRS. START conducted air monitoring and found no reportable readings. ERRS deployed containment and absorbent boom on the Clinton River, at Opdyke Road to contain the spill. All of the responding entities to include, the Claimant, investigated the area in an attempt to locate the source.

A potential source was identified as, Metalworking Lubricants. While Deputy Chief [REDACTED] and FOSC [REDACTED] were investigating the facility, they discovered a spill of gear oil in the rear bay of the building. A Notice of Federal Interest (NOFI) was issued to Metalworking Lubricants. EPA collected a sample of the spilled oil at the facility and took a sample of the sheen in the River for fingerprint analysis. The samples were sent to the Coast Guard Laboratory for analysis.

Further investigation and lab results determined that Metalworking Lubricants is not the source of the oil.⁵ To date a source has not been identified.

Description of Removal Activities for this Claimant

The Waterford Regional Fire Department, Hazmat Team responded to the scene to assist in the investigation of the mystery oil spill. Members of the Hazmat team inspected the River from Seneca to North Opdyke.

¹ POLREP pictures.

² POLREP 1 and 2.

³ Waterford Regional Fire Department

⁴ POLREP 2

⁵ See 2015 07 16 email from OSC [REDACTED] Claims Manager [REDACTED]

The Claim

On July 15, 2015, Deputy Chief [REDACTED] from the Waterford Regional Fire Department submitted a Public Services claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated response costs, which includes Fire Department Personnel and Equipment costs in the total amount of \$2,387.96.

This claim was initially assigned claim number, 915096-0001. After the Claims Manager performed an initial review and contacted the EPA FOISC, it was discovered that Federal Project Number E15519 had been opened and assigned by USEPA on June 01, 2015. As such, this claim has been assigned the claim number, E15519-0001. The Claimant has been notified of this change via email.⁶

APPLICABLE LAW:

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident".

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund."

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

⁶See 2015 07 2015 email to Claimant advising of claim number change.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish -

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.237 Authorized Claimants; A claim for net costs of providing increased or additional public services during or after removal activities, including protection from fire, safety, or health hazards, caused by a discharge of oil may be presented only by a State or a political subdivision of a State incurring the costs.

Under 33 CFR 136.239 Proof; In addition to the requirements of subparts A and B of this part, a claimant must establish—

- (a) The nature of the specific public services provided and the need for those services; (b) That the services occurred during or after removal activities; (c) That the services were provided as a result of a discharge of oil and would not otherwise have been provided; and (d) The net cost for the services and the methods used to compute those costs.

Under 33 CFR 136.241 Compensation allowable; The amount of compensation allowable is the net cost of the increased or additional service provided by the State or political subdivision.

DETERMINATION OF LOSS:

A. Overview:

1. US EPA, Region 5 provided FOSC coordination 33 U.S.C. § 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs;
4. The claim was submitted within the six year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the Fire Department’s response costs that are presented to the Fund were for actions indeed reasonable and allowable.

B. Analysis:

Claimant provided emergency services to find the source location of the spill and mitigation of the incident. The Claimant took direction from the Federal On-Scene Coordinator, US EPA, Region 5, Mr [REDACTED]

The Claimant presented their costs for Emergency Personnel, Equipment, and Administrative Fees in the amount of \$2,387.96. The NPFC determined that the costs presented for emergency services are payable by the OSLTF bringing the total payable by the OSLTF for the Waterford Regional Fire Department's emergency services to the amount of, **\$2,362.96**. The Administrative Fees in the amount of \$25.00 are denied. Administrative Fees are not an OPA compensable cost because in this instance, the Claimant's rate schedule does not address the validity and nature of this expense.

The Claims Manager was able to confirm which of the costs claimed were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP). FOSC oversight was present during this period of response and the record does support the activities performed by the Claimant as an appropriate activity as confirmed in the US EPA Pollution Reports, POLREPs. The NPFC reviewed the invoicing and the FOSC POLREPs and confirmed the Claimant's on-scene presence via the POLREPs and email from the FOSC.⁷

C. Determined Amount:

The NPFC determines that the OSLTF will pay **\$2,362.96** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim number E15519-0001 for increased public services.

All costs determined payable included in this determination have been reviewed and determined to be compensable as presented and in accordance with 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136.205 ,to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan.

AMOUNT: \$2,362.96

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 7/21/15

Supervisor Action: ***Approved***

ACCEPTANCE / RELEASE AGREEMENT

⁷ 2015 07 16 Email from FOSC [REDACTED] to the Claims Manager [REDACTED]